

Definition of Solid Waste Final Rule Public Meeting

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June 30, 2009
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Today's Agenda:

- Background & Context
- Overview of DSW Public Meeting FR Notice
- Next Steps



Why are we here today?

- To hear your comments on a recent change that EPA made to the regulations governing recycling of hazardous wastes.
- So we can consider your input as we decide how to respond to a petition addressing this rulemaking.



What is the DSW rule?

- A change to the Resource Conservation and Recovery Act (RCRA) hazardous waste management regulations.
- Published October 30, 2008.
- Revised a provision known as the “Definition of Solid Waste” which governs recycling of hazardous waste.

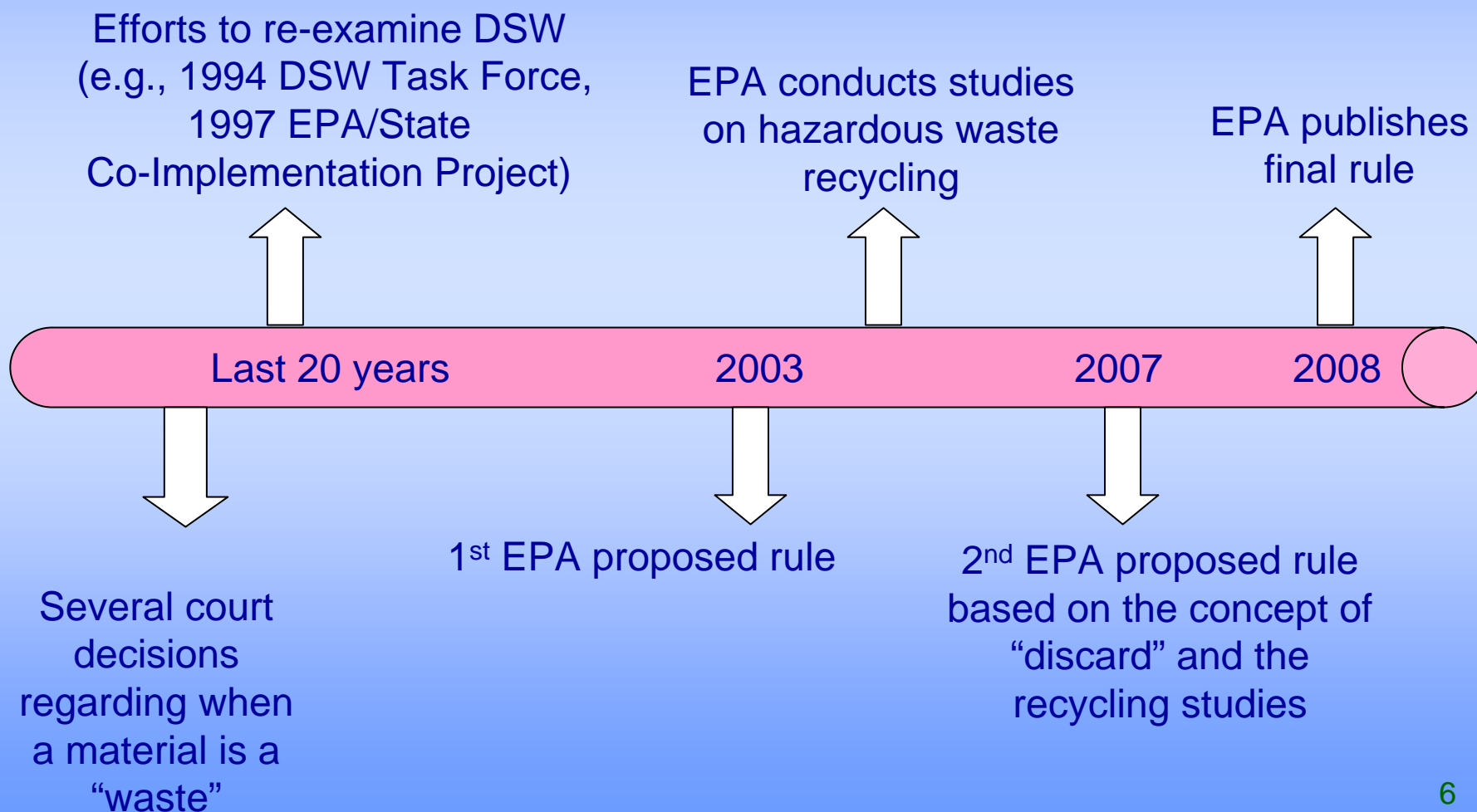


Why did EPA develop the DSW rule?

- To promote resource conservation and sustainability by encouraging recycling and reuse of hazardous wastes.
- To make recycling and reuse both cost-effective and safe by streamlining the recycling regulations while maintaining those controls that are critical to ensuring materials are not discarded and thus are protective of human health and the environment.



What is the history of this rule?





What has happened since publication of the DSW final rule?

- The federal effective date was December 29, 2008.
- On January 29, 2009, the Sierra Club submitted an administrative petition to the Agency requesting that EPA repeal the rule and stay its implementation.
- On March 6, 2009, a coalition of industry associations submitted a letter requesting that EPA deny the Sierra Club's petition on the grounds that the DSW final rule is consistent with court decisions regarding EPA's jurisdiction to regulate waste under RCRA.



What has happened since publication of the DSW final rule?

- Subsequently EPA received several letters from various stakeholders.
- The petition and all letters received are available in the docket for today's meeting.
- After meeting with representatives from both the Sierra Club and the industry coalition, EPA decided that all interested stakeholders should have an opportunity to comment and provide input before the Agency makes a decision on the petition.
- On May 27, 2009, EPA published a Federal Register notice announcing today's meeting and soliciting public comments.



What exactly is in the DSW final rule?

Four major components of final rule:

1. Under the Control of the Generator Exclusion

Self-implementing conditional exclusion for materials generated and reclaimed under the control of the generator.

2. Transfer-based Exclusion

Self-implementing exclusion with additional conditions for materials generated and transferred to another company for reclamation.

3. Non-waste Determination Procedure

Case-by-case petition process for demonstrating that specific materials are non-wastes.

4. “Legitimate” Recycling Provision

Regulatory provision defining what is legitimate recycling for the new exclusions.



What materials are eligible for the final rule?

- Only materials that are ***reclaimed*** are eligible. Examples include:
 - Spent solvents that are regenerated and reused
 - Manufacturing residues from which metals are recovered for reuse
- *Materials that are **not** eligible include:*
 - *Materials burned for energy recovery*
 - *Materials recycled in ways that involve placement on the land*
 - *Materials already excluded from the definition of solid waste*
 - *Spent lead-acid batteries*
 - *Spent petroleum catalysts (K171 and K172)*



What are some potential changes to the DSW final rule?

- RCRA section 1004(27) defines “solid waste” as “. . . any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and **other discarded material** ...resulting from industrial, commercial, mining, and agricultural operations and from community activities.” (emphasis added)
- Because the final rule reflects EPA’s interpretation of the term “discard,” EPA does not expect to repeal the entire rule or stay its implementation.
 - In particular, EPA does not expect to repeal either the exclusion for hazardous secondary materials reclaimed under the control of the generator or the non-waste determination petition process.
- However, EPA believes that there may be opportunities to revise or clarify the definition of solid waste rule.



What issues are of particular interest to EPA?

- In the Federal Register notice announcing today's meeting EPA requested comment on several particular issues, including:
 - Use of "contained" as the standard for storage of recycled materials. Options for revision include a regulatory definition of contained, additional storage standards, or further guidance.
 - The form of the notification required of persons managing recycled materials that goes into a public EPA/state data base.
 - How it is determined whether operations are "legitimate" recycling or really sham treatment or disposal in the guise of recycling, including how "toxics along for the ride" are considered.
 - How materials transferred to another party for recycling should be regulated.



How is implementation of the final rule affected by the petition?

- The DSW final rule remains in effect as part of the federal regulations unless EPA proposes and finalizes another rule to repeal or amend it.
- Most states are authorized by EPA to implement the hazardous waste regulations. Authorized states are not required to adopt the rule, but may do so (in whole or in part) at any time.
 - Currently New Jersey and Pennsylvania have adopted the rule.
- If they so choose, states may wait until EPA completes its response to the petition and then decide whether to adopt.
- If EPA decides to revise the rule, and if the revisions are more stringent than the final rule, those states who had adopted the current rule would be required to adopt the more stringent provisions.



Next Steps

- EPA will carefully consider all information provided by stakeholders as the Agency decides how to respond to the Sierra Club petition.
- A transcript of today's meeting and a copy of all written materials submitted by stakeholders will be available for public review in the docket for today's meeting.
- We received a request to extend the comment period -- written comments will now be accepted through August 13, 2009.
- Instructions for submitting comments and accessing the docket are available in the notice for today's meeting and on the DSW website.
- <http://www.epa.gov/epawaste/hazard/dsw/rulemaking.htm>



Next Steps (continued)

- After reviewing all comments, EPA will make a tentative decision on the petition as required by 40 CFR 260.20(c).
 - EPA will publish its tentative decision in the Federal Register for public comment.
 - After evaluating all public comments, EPA will publish its final decision in the Federal Register.
- The timeframe will depend largely on the number and complexity of issues raised in the petition and the public comments.



Next Steps (continued)

- Thank you for taking the time to participate today.
- We look forward to hearing your comments.
- We welcome your input as we consider the issues raised in the petition and by all interested stakeholders.